

AMENDED IN SENATE JUNE 16, 2016

CALIFORNIA LEGISLATURE—2015–16 REGULAR SESSION

ASSEMBLY BILL

No. 2888

Introduced by ~~Committee on Agriculture (Assembly Members Dodd (Chair), Gallagher (Vice Chair), Eggman, Gray, Grove, Irwin, Jones-Sawyer, Mathis, and Quirk)~~ Assembly Member Dodd

February 29, 2016

~~An act to amend Section 4401.5 of the Food and Agricultural Code, relating to fairs. An act to amend Section 1203 of the Penal Code, relating to probation.~~

LEGISLATIVE COUNSEL'S DIGEST

AB 2888, as amended, ~~Committee on Agriculture Dodd. State-supported fairs: food and fiber exhibits. Probation: sex crimes.~~

Existing law defines probation to mean the suspension of the imposition or execution of a sentence and the order of conditional and revocable release in the community under the supervision of a probation officer. Existing law authorizes a court to grant probation for some, but not all, felony convictions, as enumerated.

This bill would prohibit a court from granting probation to a defendant who is convicted of committing specified acts of rape, sodomy, oral copulation, or sexual penetration upon the victim who was prevented from resisting by any intoxicating or anesthetic substance, or any controlled substance, or was unconscious, as specified under those provisions.

Existing law requires the Secretary of Food and Agriculture to expend up to \$100,000 in any fiscal year for an exhibit or exhibits at a state-supported fair that demonstrates the process of production and use of food and fiber and to annually provide for a conference of fair

~~judges to aid the Department of Food and Agriculture in prescribing regulations for the judging of exhibits and for the premiums paid for all classes, sections, and types of exhibits, and authorizes the secretary to expend up to \$15,000 in any fiscal year for these purposes.~~

~~This bill would instead authorize rather than require the secretary to perform the above-specified functions.~~

Vote: majority. Appropriation: no. Fiscal committee: yes.
State-mandated local program: no.

The people of the State of California do enact as follows:

1 SECTION 1. Section 1203 of the Penal Code is amended to
2 read:

3 1203. (a) As used in this code, “probation” means the
4 suspension of the imposition or execution of a sentence and the
5 order of conditional and revocable release in the community under
6 the supervision of a probation officer. As used in this code,
7 “conditional sentence” means the suspension of the imposition or
8 execution of a sentence and the order of revocable release in the
9 community subject to conditions established by the court without
10 the supervision of a probation officer. It is the intent of the
11 Legislature that both conditional sentence and probation are
12 authorized whenever probation is authorized in any code as a
13 sentencing option for infractions or misdemeanors.

14 (b) (1) Except as provided in subdivision (j), if a person is
15 convicted of a felony and is eligible for probation, before judgment
16 is pronounced, the court shall immediately refer the matter to a
17 probation officer to investigate and report to the court, at a specified
18 time, upon the circumstances surrounding the crime and the prior
19 history and record of the person, which may be considered either
20 in aggravation or mitigation of the punishment.

21 (2) (A) The probation officer shall immediately investigate and
22 make a written report to the court of his or her findings and
23 recommendations, including his or her recommendations as to the
24 granting or denying of probation and the conditions of probation,
25 if granted.

26 (B) Pursuant to Section 828 of the Welfare and Institutions
27 Code, the probation officer shall include in his or her report any
28 information gathered by a law enforcement agency relating to the
29 taking of the defendant into custody as a minor, which shall be

1 considered for purposes of determining whether adjudications of
2 commissions of crimes as a juvenile warrant a finding that there
3 are circumstances in aggravation pursuant to Section 1170 or to
4 deny probation.

5 (C) If the person was convicted of an offense that requires him
6 or her to register as a sex offender pursuant to Sections 290 to
7 290.023, inclusive, or if the probation report recommends that
8 registration be ordered at sentencing pursuant to Section 290.006,
9 the probation officer's report shall include the results of the
10 State-Authorized Risk Assessment Tool for Sex Offenders
11 (SARATSO) administered pursuant to Sections 290.04 to 290.06,
12 inclusive, if applicable.

13 (D) The probation officer may also include in the report his or
14 her recommendation of both of the following:

15 (i) The amount the defendant should be required to pay as a
16 restitution fine pursuant to subdivision (b) of Section 1202.4.

17 (ii) Whether the court shall require, as a condition of probation,
18 restitution to the victim or to the Restitution Fund and the amount
19 thereof.

20 (E) The report shall be made available to the court and the
21 prosecuting and defense attorneys at least five days, or upon request
22 of the defendant or prosecuting attorney nine days, prior to the
23 time fixed by the court for the hearing and determination of the
24 report, and shall be filed with the clerk of the court as a record in
25 the case at the time of the hearing. The time within which the report
26 shall be made available and filed may be waived by written
27 stipulation of the prosecuting and defense attorneys that is filed
28 with the court or an oral stipulation in open court that is made and
29 entered upon the minutes of the court.

30 (3) At a time fixed by the court, the court shall hear and
31 determine the application, if one has been made, or, in any case,
32 the suitability of probation in the particular case. At the hearing,
33 the court shall consider any report of the probation officer,
34 including the results of the SARATSO, if applicable, and shall
35 make a statement that it has considered the report, which shall be
36 filed with the clerk of the court as a record in the case. If the court
37 determines that there are circumstances in mitigation of the
38 punishment prescribed by law or that the ends of justice would be
39 served by granting probation to the person, it may place the person
40 on probation. If probation is denied, the clerk of the court shall

1 immediately send a copy of the report to the Department of
2 Corrections and Rehabilitation at the prison or other institution to
3 which the person is delivered.

4 (4) The preparation of the report or the consideration of the
5 report by the court may be waived only by a written stipulation of
6 the prosecuting and defense attorneys that is filed with the court
7 or an oral stipulation in open court that is made and entered upon
8 the minutes of the court, except that a waiver shall not be allowed
9 unless the court consents thereto. However, if the defendant is
10 ultimately sentenced and committed to the state prison, a probation
11 report shall be completed pursuant to Section 1203c.

12 (c) If a defendant is not represented by an attorney, the court
13 shall order the probation officer who makes the probation report
14 to discuss its contents with the defendant.

15 (d) If a person is convicted of a misdemeanor, the court may
16 either refer the matter to the probation officer for an investigation
17 and a report or summarily pronounce a conditional sentence. If
18 the person was convicted of an offense that requires him or her to
19 register as a sex offender pursuant to Sections 290 to 290.023,
20 inclusive, or if the probation officer recommends that the court,
21 at sentencing, order the offender to register as a sex offender
22 pursuant to Section 290.006, the court shall refer the matter to the
23 probation officer for the purpose of obtaining a report on the results
24 of the State-Authorized Risk Assessment Tool for Sex Offenders
25 administered pursuant to Sections 290.04 to 290.06, inclusive, if
26 applicable, which the court shall consider. If the case is not referred
27 to the probation officer, in sentencing the person, the court may
28 consider any information concerning the person that could have
29 been included in a probation report. The court shall inform the
30 person of the information to be considered and permit him or her
31 to answer or controvert the information. For this purpose, upon
32 the request of the person, the court shall grant a continuance before
33 the judgment is pronounced.

34 (e) Except in unusual cases where the interests of justice would
35 best be served if the person is granted probation, probation shall
36 not be granted to any of the following persons:

37 (1) Unless the person had a lawful right to carry a deadly
38 weapon, other than a firearm, at the time of the perpetration of the
39 crime or his or her arrest, any person who has been convicted of
40 arson, robbery, carjacking, burglary, burglary with explosives,

1 rape with force or violence, torture, aggravated mayhem, murder,
2 attempt to commit murder, trainwrecking, kidnapping, escape from
3 the state prison, or a conspiracy to commit one or more of those
4 crimes and who was armed with the weapon at either of those
5 times.

6 (2) Any person who used, or attempted to use, a deadly weapon
7 upon a human being in connection with the perpetration of the
8 crime of which he or she has been convicted.

9 (3) Any person who willfully inflicted great bodily injury or
10 torture in the perpetration of the crime of which he or she has been
11 convicted.

12 (4) Any person who has been previously convicted twice in this
13 state of a felony or in any other place of a public offense which,
14 if committed in this state, would have been punishable as a felony.

15 (5) Unless the person has never been previously convicted once
16 in this state of a felony or in any other place of a public offense
17 which, if committed in this state, would have been punishable as
18 a felony, any person who has been convicted of burglary with
19 explosives, rape with force or violence, torture, aggravated
20 mayhem, murder, attempt to commit murder, trainwrecking,
21 extortion, kidnapping, escape from the state prison, a violation of
22 Section 286, 288, 288a, or 288.5, or a conspiracy to commit one
23 or more of those crimes.

24 (6) Any person who has been previously convicted once in this
25 state of a felony or in any other place of a public offense which,
26 if committed in this state, would have been punishable as a felony,
27 if he or she committed any of the following acts:

28 (A) Unless the person had a lawful right to carry a deadly
29 weapon at the time of the perpetration of the previous crime or his
30 or her arrest for the previous crime, he or she was armed with a
31 weapon at either of those times.

32 (B) The person used, or attempted to use, a deadly weapon upon
33 a human being in connection with the perpetration of the previous
34 crime.

35 (C) The person willfully inflicted great bodily injury or torture
36 in the perpetration of the previous crime.

37 (7) Any public official or peace officer of this state or any city,
38 county, or other political subdivision who, in the discharge of the
39 duties of his or her public office or employment, accepted or gave

1 or offered to accept or give any bribe, embezzled public money,
2 or was guilty of extortion.

3 (8) Any person who knowingly furnishes or gives away
4 phencyclidine.

5 (9) Any person who intentionally inflicted great bodily injury
6 in the commission of arson under subdivision (a) of Section 451
7 or who intentionally set fire to, burned, or caused the burning of,
8 an inhabited structure or inhabited property in violation of
9 subdivision (b) of Section 451.

10 (10) Any person who, in the commission of a felony, inflicts
11 great bodily injury or causes the death of a human being by the
12 discharge of a firearm from or at an occupied motor vehicle
13 proceeding on a public street or highway.

14 (11) Any person who possesses a short-barreled rifle or a
15 short-barreled shotgun under Section 33215, a machinegun under
16 Section 32625, or a silencer under Section 33410.

17 (12) Any person who is convicted of violating Section 8101 of
18 the Welfare and Institutions Code.

19 (13) Any person who is described in subdivision (b) or (c) of
20 Section 27590.

21 *(14) Any person who is convicted of violating paragraph (3) or*
22 *(4) of subdivision (a) of Section 261, paragraph (2) or (3) of*
23 *subdivision (a) of Section 262, subdivision (f) or (i) of Section 286,*
24 *subdivision (f) or (i) of Section 288a, or subdivision (d) or (e) of*
25 *Section 289.*

26 (f) When probation is granted in a case which comes within
27 subdivision (e), the court shall specify on the record and shall enter
28 on the minutes the circumstances indicating that the interests of
29 justice would best be served by that disposition.

30 (g) If a person is not eligible for probation, the judge shall refer
31 the matter to the probation officer for an investigation of the facts
32 relevant to determination of the amount of a restitution fine
33 pursuant to subdivision (b) of Section 1202.4 in all cases where
34 the determination is applicable. The judge, in his or her discretion,
35 may direct the probation officer to investigate all facts relevant to
36 the sentencing of the person. Upon that referral, the probation
37 officer shall immediately investigate the circumstances surrounding
38 the crime and the prior record and history of the person and make
39 a written report to the court of his or her findings. The findings

1 shall include a recommendation of the amount of the restitution
2 fine as provided in subdivision (b) of Section 1202.4.

3 (h) If a defendant is convicted of a felony and a probation report
4 is prepared pursuant to subdivision (b) or (g), the probation officer
5 may obtain and include in the report a statement of the comments
6 of the victim concerning the offense. The court may direct the
7 probation officer not to obtain a statement if the victim has in fact
8 testified at any of the court proceedings concerning the offense.

9 (i) A probationer shall not be released to enter another state
10 unless his or her case has been referred to the Administrator of the
11 Interstate Probation and Parole Compacts, pursuant to the Uniform
12 Act for Out-of-State Probationer or Parolee Supervision (Article
13 3 (commencing with Section 11175) of Chapter 2 of Title 1 of Part
14 4) and the probationer has reimbursed the county that has
15 jurisdiction over his or her probation case the reasonable costs of
16 processing his or her request for interstate compact supervision.
17 The amount and method of reimbursement shall be in accordance
18 with Section 1203.1b.

19 (j) In any court where a county financial evaluation officer is
20 available, in addition to referring the matter to the probation officer,
21 the court may order the defendant to appear before the county
22 financial evaluation officer for a financial evaluation of the
23 defendant's ability to pay restitution, in which case the county
24 financial evaluation officer shall report his or her findings regarding
25 restitution and other court-related costs to the probation officer on
26 the question of the defendant's ability to pay those costs.

27 Any order made pursuant to this subdivision may be enforced
28 as a violation of the terms and conditions of probation upon willful
29 failure to pay and at the discretion of the court, may be enforced
30 in the same manner as a judgment in a civil action, if any balance
31 remains unpaid at the end of the defendant's probationary period.

32 (k) Probation shall not be granted to, nor shall the execution of,
33 or imposition of sentence be suspended for, any person who is
34 convicted of a violent felony, as defined in subdivision (c) of
35 Section 667.5, or a serious felony, as defined in subdivision (c) of
36 Section 1192.7, and who was on probation for a felony offense at
37 the time of the commission of the new felony offense.

38 ~~SECTION 1.—Section 4401.5 of the Food and Agricultural Code~~
39 ~~is amended to read:~~

1 ~~4401.5. (a) The secretary may expend an amount not to exceed~~
2 ~~a total of one hundred thousand dollars (\$100,000) in any fiscal~~
3 ~~year for any exhibit or exhibits located on any state-supported fair~~
4 ~~demonstrating, in a creative and innovative manner, the process~~
5 ~~of production and use of food and fiber from the producer to the~~
6 ~~consumer in this state.~~
7 ~~(b) The secretary may annually provide for a conference of fair~~
8 ~~judges to aid the department in prescribing regulations adopted~~
9 ~~pursuant to Section 4501. The secretary may expend up to fifteen~~
10 ~~thousand dollars (\$15,000) in any fiscal year for these purposes.~~